

Application of City of Three Forks
Water Reservation No. 70117-41H

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF CITY OF THREE FORKS
CONSERVATION DISTRICT TO RESERVE WATER (Mont. Code Ann. §
85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The City of Three Forks is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. 2-A, p. 2; Mont. Code Ann. § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The City of Three Forks has applied for a water reservation of 81 acre-feet/year (af/yr) of water with a maximum diversion rate of 0.45 cubic feet/second (cfs) to be diverted from two groundwater wells located within the Three Forks city limits for year round use. (Bd. Exh. 2-A, pp. 2 and 27.)

3. The City of Three Forks requested a water reservation to meet future demands by municipal users. (Bd. Exh. 2-A, p. 2.)

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR
BY THE CITY OF THREE FORKS (Mont. Code Ann. § 85-2-
316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The City of Three Forks seeks to provide municipal water for future growth in a cost-effective manner. Sound planning requires providing users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 2-A, p. 8.)

5. The purpose of the reservation is to provide the water for municipal uses. (Bd. Exh. 2-A, p. 2.) Municipal uses are beneficial uses of water in Montana. (Mont. Code Ann. § 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR
BY THE CITY OF THREE FORKS (Mont. Code Ann. § 85-2-
316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

6. Three groundwater wells presently provide an average of .43 cfs of water to the City of Three Forks. (Bd. Exh. 2-C, p. 2.) The reservation water requested would be delivered through the existing water supply system. (Bd. Exh. 2-A, p. 25.)

7. A reservation is the only means to obtain an early priority date for water that will be needed to meet projected municipal growth. In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249; Bd. Exh. 2-A, pp. 6 and 7.)

8. It is important that the City of Three Forks have a water reservation to meet future municipal water demands in order for the community to grow and develop. (Bd. Exh. 2-A, pp. 21 - 23.)

9. Competing water uses may prevent the City of Three Forks from obtaining or perfecting a water use permit in the future. Without a reservation, the City of Three Forks may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF THREE FORKS (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

10. The method of determining the amount of water requested for a water reservation by the City of Three Forks was based on a forecast of its future population to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 2-A, pp. 13 and 14.) The methodology used by the City of Three Forks projected an average annualized (compounded population growth rate) of approximately 0.88 percent. (Bd. Exh. 40, p. 236.) The 1990 population of Three Forks was 1,203. (Bd. Exh. 40, p. 236.) The City of Three Forks' population forecast for the year 2025 was 1,860 people. (Bd. Exh. 40, p. 236.)

11. The populations recorded in the 1990 census indicate that Three Forks' population had decreased from 1,247 to 1,203 between 1980 and 1990 (Bd. Exh. 40, p. 236) but grew from 1,161 persons in 1960. (Bd. Exh. 2-A, p. 10.) DNRC found that the population projection is reasonable (Bd. Exh. 40, p. 236) with Three Forks' location relative to Bozeman, the potential for growth by annexation, and/or the future potential need of area residents to connect to the city water system due to the arsenic contamination of the Madison River aquifer in the area. (Bd. Exh. 2-C, p. 5.)

12. The City of Three Forks' distribution system is in good condition and does not experience any significant loss in the system. (Bd. Exh. 2-A, p. 20.)

13. Water services in Three Forks are metered at present. (Bd. Exh. 2-A, p. 13.) The City of Three Forks average water use rate is 167 gallons per capita per day (gpcd) without the average 65,500 gallons per day used by the Cyprus Talc plant. (Bd. Exh. 2-A, p. 12.) The 167 gpcd use rate is less than the typical basin use rate of 250 gallons per person daily. (Bd. Exh. 9-A, pp. 24 and 25 .)

14. The water use efficiencies associated with the municipal uses by the City of Three Forks are reasonable. (ARM 36.16.107B(3)(b).)

15. No other cost-effective measure could be taken within the reservation term to increase the use efficiency by the City of Three Forks and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE CITY OF THREE FORKS IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

16. Benefits of the City of Three Forks' water reservation were calculated on a willingness-to-pay basis. The City of Three Forks used a \$1.50/1,000 gallons value. (Bd. Exh. 2-A, p. 19.) Helena municipal users are currently paying \$2.47/1,000 gallons. (Bd. Exh. 40, p. 253.)

17. The additional water provided by the water reservation will cost approximately \$0.45/1,000 gallons. (Bd. Exh. 2-C, p. 4.)

18. The direct benefits of the City of Three Forks' water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

19. Indirect benefits of the City of Three Forks' reservation may include secondary economic benefits to the community and to the state, and expanding both the property and income tax base from increased population. (Bd. Exh. 2-A, p. 21.)

20. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 2-A, p. 21.)

21. There is no significant adverse environmental impact associated with the use of the City of Three Forks' water reservation. (Bd. Exh. 2-C, p. 5.) The effects of individual municipal water reservation depletions on water quality have not been quantified (Bd. Exh. 40, pp. 253-254), but should be very small. Resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 2-A.)

22. Net benefits of granting the City of Three Forks' water reservation exceed the net benefits of not granting the water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

23. The City of Three Forks identified one alternative source of water for future development, surface water. Diversion of surface water would not provide greater net benefits than the water reservation (Bd. Exh. 2-A, p. 20) and are not reasonable. (ARM 36.16.107B(4)(c).)

24. Failure to reserve water for future municipal use by the City of Three Forks is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 2-A, p. 22; ARM 36.16.107B(4)(d).)

25. As conditioned, the City of Three Forks' water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b), (5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

26. The water reservation by the City of Three Forks will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 2-A, p. 3; ARM 36.16.107B(5) and (6).)

27. The City of Three Forks has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 2-A, p. 24.)

28. The City of Three Forks is capable of exercising reasonable diligence towards feasibly financing the project and applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

29. The priority date of the City of Three Forks' water reservation is July 1, 1985. (Mont. Code Ann. § 85-2-331(4).)

30. As conditioned, the City of Three Forks' water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

31. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this Order outweighs the values protected by the municipal reservations.

III. CONCLUSIONS OF LAW

1. City of Three Forks is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the City of Three Forks' application is a beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)

3. The need for the City of Three Forks has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its

reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

4. The methodologies and assumptions used by the City of Three Forks are suitable and accurate under present conditions. (ARM 36.16.107B(3)(a).) As modified, the City of Three Forks has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

5. Based on a weighing and balancing of the evidence, the reservation by the City of Three Forks as modified herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)

6. Upper Missouri River water reservations approved by the Board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)

7. The Board may grant, deny, modify, or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)

8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter, any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

IV. ORDER

1. Subject to all applicable modifications, conditions, and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this Order) the application of the City of Three Forks is granted for the following amount and flow of water: 0.25 cfs and 81 af/year.

2. The point of diversion and place of use are from the well set forth in the reservation application City of Three Forks and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.